(3)
Supreme Court U.S.
FILED
04 63 JUL 12 2004
No.
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

DAVID B. CORNEAL AND SANDRA Y. CORNEAL,
Petitioners

v.

JACKSON TOWNSHIP, HUNTINGDON COUNTY, PENNSYLVANIA, ET AL.,
Respondents

On Petition For Writ Of Certiorari
To the United States Court of Appeals for the Third Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

BRIDGET E. MONTGOMERY
Counsel of Record
ADAM M. SHIENVOLD
Eckert Seamans Cherin & Mellott, LLC
213 Market Street
Eighth Floor
Harrisburg, PA 17101
717.237.6000

APPENDIX
TABLE OF CONTENTS

1. Opinion of the United States Court of Appeals for the Third Circuit, dated April 13, 2004 ..... 1a
2. Opinion and Order of the United States District Court for the Middle District of Pennsylvania, dated July 28, 2003 ..... 5a
3. Order of the United States District Court for the Middle District of Pennsylvania, dated March 18, 2003 ..... 34a
4. Opinion and Order of the United States District Court for the Middle District of Pennsylvania dated December 23, 2002 ..... 37a

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-3587

DAVID B. CORNEAL; SANDRA Y. CORNEAL,
Appellants
v.
JACKSON TOWNSHIP, Huntingdon County, Pennsylvania; W. THOMAS WILSON, Individually and in his Official Capacity as Supervisor of Jackson Township; MICHAEL YODER, Individually and in his Official Capacity as Supervisor of Jackson Township; RALPH WEILER, Individually and in his Official Capacity as Supervisor of Jackson Township; BARRY PARKS, Individually and in his Official Capacity as Sewage Enforcement Officer of Jackson Township; DAVID VAN DOMMELEN, Individually and in his Official Capacity as Building Permit Officer; ANN L. WIRTH, Individually and in her Official Capacity as Secretary of Jackson Township; LARRY NEWTON, Individually and in his Official Capacity as Solicitor to Jackson Township

---

On Appeal from the
United States District Court for the Middle District of Pennsylvania (D.C. No. 00-cv-01192)
District Judge: Honorable Sylvia H. Rambo

Argued: March 30, 2004
Before: ALITO, FISHER and ALDISERT, Circuit Judges.

(Filed April 13, 2004)

Bridget E. Montgomery (Argued) Adam M. Shienvold Eckert, Seamans, Cherin & Mellott 213 Market Street, 8th Floor Harrisburg, PA 17101 Attorneys for Appellants

Anthony R. Sherr (Argued) Mayers, Mennies & Sherr 3031 Walton Road Building A, Suite 330 P. O. Box 1547 Blue Bell, PA 19422 Attorney for Appellees, Township of Jackson, W. Thomas Wilson, Michael Yoder, Ralph Weiler, Barry Parks, David Van Dommelen, and Ann L. Wirth

Kathryn L. Simpson (Argued) Mette, Evans & Woodside 3401 North Front Street P. O. Box 5950 Harrisburg, PA 17110-0950 Attorney for Appellee, Larry Newton

---

OPINION OF THE COURT

FISHER, Circuit Judge.

David and Sandra Corneal appeal the district court's grant of summary judgment to Jackson Township and various officials on claims for substantive due process and tortious interference with contract. Plaintiffs also argue that the district court erred in granting a motion to dismiss the Township solicitor from the case, and in the alternative, suggest that the court abused its discretion in denying leave to amend. We will affirm.

The parties are familiar with the facts and procedural history, which we will not recite except as necessary to the discussion. The Corneals argue that a jury must decide

whether their substantive due process rights were violated by the enactment of a moratorium on subdivisions and other actions that allegedly interfered with the plaintiffs' attempts to subdivide, develop, and sell property they owned in Jackson Township. In *United Artists Theatre Circuit, Inc. v. Township of Warrington, Pa.*, we concluded that "executive action violates substantive due process only when it shocks the conscience." 316 F.3d 392, 399-400 (3d Cir. 2003) (emphasis added). Otherwise, federal courts could be "cast in the role of a zoning board of appeals." *Id.* at 402 (internal quotes removed).

We agree with the district court's discussion of *United Artists* and will not repeat what was addressed in the decision below. As noted by the district court, unless the defendants' actions were "completely unrelated in any way to a rational land use goal," there is no violation. *See County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998) (due process protects against "exercise of power without any reasonable justification in the service of a legitimate governmental objective"). Although some conduct may evidence personal animus – such as calling Mr. Corneal "that trouble-making yuppie from over the mountain" – under *United Artists*, mere improper motives are not conscious-shocking. *See United Artists*, 316 F.3d at 400-01.[1]

The enactment of the moratorium was related to rational land-use decisions, and as such, fails to shock the conscience. *See Bituminous Materials, Inc. v. Rice County*, 126 F.3d 1068, 1070-71 (8th Cir. 1997) (despite personal

---

[1] Plaintiffs suggest that one of the defendants had a personal interest in the property, which had previously belonged to that defendant's grandfather in the 1960s. We agree with the district court that no reasonable jury could conclude that the purported motivation was determinative to the defendants' conduct. "Mere speculation about the possibility of the existence of such facts does not entitle [plaintiffs] to go to trial." *Sterling Nat'l Mortgage Co., Inc. v. Mortgage Corner, Inc.*, 97 F.3d 39, 45 (3d Cir. 1996).

animus, zoning board "had rational bases" to restrict the plaintiff's permit). Although the moratorium might not have been in accordance with state law when enacted, even "[a] bad-faith violation of state law remains only a violation of state law." *Chesterfield Development Corp. v. City of Chesterfield*, 963 F.2d 1102, 1105 (8th Cir. 1992), *cited in United Artists*, 316 F.3d at 402. The defendants' subsequent actions were related to or stemmed from the moratorium, and also fail to shock the conscience, either individually or as a whole.

Detailed discussion of the plaintiffs' other contentions is not necessary. Plaintiffs claim that defendants interfered with the Corneals' contract to sell property to a third party, because the solicitor told the buyers' attorney that he doubted a subdivision ordinance would be adopted by the closing date and may have said that the supervisors would not grant plaintiffs subdivision approval. The buyers pulled out of the contract. Such facts fail to show an intent to interfere and an absence of privilege or justification, both elements of an intentional interference claim. *See Triffin v. Janssen*, 626 A.2d 571, 574 (Pa. Super. 1993) (listing elements and holding that plaintiff failed to meet burden to show defendant lawyer's conduct was unprivileged or unjustified).[2]

Finally, as the claims in this case were properly dismissed, issues regarding the dismissal of the solicitor are moot. Amendment would be futile as it would not change the outcome. *See Krantz v. Prudential Invs. Fund Mgmt. LLC*, 305 F.3d 140, 144 (3d Cir. 2002) (futility justifies denial of leave to amend). Accordingly, the judgment of the district court will be affirmed.

---

[2] The only state claim raised in this appeal is the interference with contracts claim. Although plaintiffs broadly pray for reversal of their "state law claims," such a passing reference is insufficient to bring unaddressed issues before this Court on appeal. *Simmons v. City of Phila.*, 947 F.2d 1042, 1066 (3d Cir. 1991).

DAVID B. CORNEAL and SANDRA Y. CORNEAL,
Plaintiffs,
v.
JACKSON TOWNSHIP, Huntingdon County, Pennsylvania, et al.,
Defendants.

CIVIL NO. 1:CV-00-1192

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

313 F. Supp. 2d 457

July 28, 2003, Decided

OPINION:

MEMORANDUM

Before the court are Defendants' renewed motion for summary judgment and Plaintiffs' motion for partial reconsideration of the court's order of December 23, 2002. The parties have briefed the issues, and the matters are now ripe for disposition.

I. BACKGROUND

Plaintiffs, David and Sandra Corneal ("the Corneals"), filed this case alleging the following: violations of their rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution (Count I); that Defendants engaged in a civil conspiracy in violation of Pennsylvania common law (Count II); that Defendants intentionally interfered with the Corneals' contractual relations (Count III); and that Defendants' actions violated

the Pennsylvania Constitution (Count IV). Defendants in this action include the following: (1) Jackson Township, Pennsylvania; (2) W. Thomas Wilson; (3) Michael Yoder; (4) Ralph Wiler; (5) Ann L. Wirth, Jackson Township Secretary; (6) David Van Dommelen, Jackson Township's building permit officer; and (7) Barry Parks, Sewage Enforcement Officer for Jackson Township. Defendants Wilson, Yoder, and Wiler are members of the Jackson Township Board of Supervisors ("the Board"). The court has subject matter jurisdiction over this action based on 28 U.S.C. §§ 1331 and 1367.

A. Facts

Construing all genuine disputes of fact in favor of the Corneals, the non-moving party, the following constitutes the relevant factual background to the instant motions. In 1998, the Corneals, who reside in State College, Pennsylvania, acquired a ninety-five acre tract of land located in Jackson Township, Huntingdon County, Pennsylvania. The property had previously been part of the estate of Defendant Wilson's grandfather. When the Corneals purchased the property, a house and a barn were already located on it. The Corneals planned to subdivide and sell a portion of the tract. To assist them in obtaining approval from the Township, the Corneals had the tract surveyed and prepared a subdivision plan. The Corneals also hired Defendant Parks, the Township's Sewage Enforcement Officer ("SEO"), to test the tract's suitability for an on-site septic system. Defendant Parks located suitable sites on the tract. After identifying the suitable septic sites, the Corneals hired Defendant Wilson's private firm, Eagle Excavation, to conduct percolation tests. The tests were successful, and the Corneals paid Eagle Excavation for its services. At the time Defendant Wilson's firm performed the percolation tests, the Township had not enacted a moratorium on land use subdivision. After

receiving the proposed sewage modules from the Corneals' agent, David Simpson, Defendant Parks reviewed and signed them.

During August and September of 1999, the Corneals prepared a subdivision plan and marketed one of the lots, a twenty-five acre tract, on which sat the pre-existing house and barn. On October 7, 1999, the Corneals entered into a contract to sell the tract for $ 150,000 to John Hewett, Jr. and Joann Smith ("the Buyers"). In accordance with the contract's terms, the Buyers submitted a down payment of $4,000 and agreed to pay $500 per month against the purchase price until settlement, scheduled for June 30, 2000.

During this period, Jackson Township did not have a subdivision ordinance to govern the development of land.[1] However, at its meeting in January of 2000, the Board, by unanimous vote, decreed a temporary moratorium on subdividing property pending the enactment of a formal ordinance governing subdivision and land development. The moratorium was not enacted pursuant to a resolution or any other formal action. It merely appeared in the meeting's minutes. Besides its appearance in the meeting minutes, no other documents exist relating to the moratorium.

The Corneals presented their original subdivision plan to the Board at the Township meeting in February of 2000. The plan indicated that the original ninety-five acre tract would be subdivided into three lots. On the largest of those lots, the Corneals planned to build their own home. Because of the newly-imposed moratorium, Defendants Wilson, Yoder, and Wiler refused to review the Corneals' subdivision plan. Within several days of the Board's refusal to review the plan, the Corneals submitted the plan to the Huntingdon

---

[1] Huntingdon County has a Land Development Guide ("the Guide"). However, the Guide is not an ordinance pursuant to the provisions of the Municipalities Planning Code ("MPC"). *See* 53 Pa. Cons. Stat. § 10101, *et seq.*

County Planning Commission ("CPC"), pursuant to the Board members' advice. The CPC reviewed the plan and, by way of a letter dated February 24, 2000, provided comments and recommendations. The CPC recommended that the Township deny approval of the plan in light of the Township's pending subdivision ordinance and the moratorium against subdividing property.

At the Board's meeting on April 3, 2000 Mr. Corneal requested that the Board sign five sewage modules. The Board, however, refused to do so. Mr. Corneal then stated that he was no longer planning on subdividing his property, but that he needed the sewage modules to obtain a building permit to begin construction of his own home. The Board, however, refused to issue five sewage modules for one house.[2] Moreover, the Board claimed that if they were to sign the sewage modules, that would be the same as permitting the Corneals to build their house, and that this would constitute a subdivision, prohibited by the moratorium, because the tract already had an existing dwelling located on it.

Mr. Corneal then requested a privy permit so that he could begin construction of his two story garage and art studio. The Board members, however, indicated that they were not permitted to issue privy permits; that the Corneals would have to get that from Defendant Parks, the SEO. After that meeting, Mr. Corneal called Defendant Parks and requested a privy permit. Defendant Parks indicated that

---

[2] According to the Board, because their tract already had an existing dwelling on it, the Board would have essentially granted the Corneals a subdivision if it had granted their request for a building permit to construct their own home. Similarly, Defendants contend that if Defendant Van Dommelen had granted Mr. Corneals' building permit application with respect to the house, his granting of that permit would have essentially caused a subdivision due to the existing dwelling on the property. (*See* Van Dommelen Depo. at p. 49.)

Defendant Wirth had called him and instructed him not to issue the Corneals a privy permit. However, during his deposition, Defendant Parks indicated that he was without authority to issue the Corneals a privy permit, which – according to state regulations – could only be issued to lots subdivided before 1972 and which did not have piped and running water connected to any other structure on the lot. Because the Corneals' tract had an existing structure on it with piped and running water, Defendant Parks would be unable to issue a privy permit to the Corneals.[3] The Corneals then called Larry Newton, an attorney and Township Solicitor, to discuss the situation, but the Corneals did not receive a substantive response.

The Corneals revised the plan in hopes of receiving approval. They developed a new plan that reflected not three lots, but only two. One of these lots would be sold to the Buyers under the terms of their already existing contract with the Corneals. The other lot would contain the residual amount of land, approximately sixty-nine acres, on which the Corneals would build a house, an art studio, and a garage. The Corneals submitted the revised plan to the CPC. On April 20, 2000, the CPC recommended conditional approval by the Township, pending adoption of the proposed land development ordinance. The CPC found that the revised plan appeared to conform to the proposed ordinance. The Corneals, however, never submitted the revised two-lot subdivision plan to the Township. According to Mr. Corneal, he felt that such a submission would be futile due to the Township's moratorium. (*See* Corneal Depo. at p. 114.)

Wanting to begin developing the land, the Corneals constructed a one and a half (1.5) mile driveway through the

---

[3] Even if the Corneals had received approval to subdivide the property between the portion containing the existing structures and the remainder, they still would not have been eligible for a privy permit because the property would have been subdivided subsequent to 1972.

tract at some point in the Spring of 2000. The Corneals originally requested Defendant Wilson's firm, Eagle Excavation, do the work. However, Defendant Wilson later refused the job. While constructing the driveway, the United States Army Corps of Engineers and the Commonwealth of Pennsylvania Department of Environmental Protection approached the chosen contractor to investigate a complaint that the Corneals were violating wetlands regulations. The complaint was found to be without merit. The Corneals contend that Defendants Wilson and/or Defendant Wirth filed the complaint.

Next, Mr. Corneal went to Defendant Van Dommelen, the Township's Building Permit Officer, to obtain a building permit for his garage. Defendant Van Dommelen, however, refused to issue the permit because the Board had instructed him not to issue any permits to the Corneals. Defendant Van Dommelen even called Defendant Wilson, in Mr. Corneal's presence. During that conversation, Defendant Wilson told Defendant Van Dommelen: "don't you dare issue [David Corneal] a permit." (Wilson Depo. at p. 128.) Defendant Van Dommelen, however, had granted every other building permit application submitted to him in 2000. (Van Dommelen Depo. at p. 103.) Although Defendant Van Dommelen never refused to provide any other person in the Township with a permit, he refused to even provide the Corneals with a permit *application. (See Id.* at p. 56.) During his conversations with Mr. Corneal, Defendant Van Dommelen referred to Mr. Corneal as a "trouble making yuppie from over the mountain." (*Id.* at p. 71.) He used this term to describe Mr. Corneal because Mr. Corneal "just behaves like someone who wants to get their own way and his age group." (*Id.* at p. 73.)

On May 1, 2000, the Corneals received a letter from the Buyers' attorney. The letter informed the Corneals that the Buyers had terminated the agreement to purchase the

tract due to difficulties with the Township in obtaining subdivision approval. The Buyers also requested that their down payment of $4,000 be refunded along with the $3,000 in payments ($500 per month) paid to the Corneals in expectation of the settlement date of June 30, 2000. The Buyers' attorney, Harvey Reeder, shared an office with Township Solicitor Larry Newton at all times relevant to this litigation. Reeder asked Newton if he believed that the Corneals would be able to convey the property to the Buyers by the previously agreed upon settlement date of June 30, 2000. Newton responded that he did not believe the Corneals would be able to do so. After the Buyers pulled out of their contract to purchase the subdivided portion of the Corneals' land, Defendant Wilson's nephew approached Mr. Corneal about the possibility of purchasing the tract.

On either July 7 or July 10, 2000, the Board approved its subdivision ordinance, along with driveway and privy ordinances. The Corneals began construction without a permit from the Township at some point in July of 2000. In October 2000, the Township brought suit against the Corneals to enjoin their construction. The parties, however, settled that matter. Since the filing of the instant lawsuit on June 30, 2000, the Township has granted the Corneals all permits and approvals necessary to begin development of their tract.

B. Procedural History

On June 30, 2000, the Corneals filed their original complaint in this matter. In that document, the Corneals named Newton as a defendant along with the captioned Defendants. In Count I of that document, the Corneals claimed that Defendants, acting under color of state law, deprived them of their clearly established right and privilege to own, use, dispose, and develop their property as protected by the United States Constitution. In Counts II through IV,

the Corneals made claims for civil conspiracy, intentional interference with contractual relations, and violations of the Pennsylvania Constitution. All Defendants filed a motion to dismiss the complaint. On March 29, 2001, the court granted the Township's motion to dismiss Count III of the original complaint, regarding the claim of intentional interference with contractual relations. The court held that the claim was barred by the Pennsylvania Subdivision Torts Claim Act ("the PSTCA"). *See* 42 Pa. Cons. Stat. § 8541, *et seq.* However, the court refused to dismiss Count III as to the individual Defendants. Additionally, the court granted Newton's motion to dismiss him as a defendant in the case. The Corneals filed a motion for reconsideration on April 12, 2001, and an amended motion for reconsideration on July 27, 2001. On September 12, 2001, the court denied the motion for reconsideration. On October 18, 2001, however, the court granted the Corneals leave to file an amended complaint. The Corneals filed an amended complaint on November 6, 2001. Like the original complaint, the amended complaint alleged violations of substantive and procedural due process (Count I), state law claims for civil conspiracy (Count II), intentional interference with contractual relations (Count III), and violations of the Pennsylvania Constitution (Count IV).

After the conclusion of discovery, the parties filed cross-motions for summary judgment. On December 23, 2002, the court issued an order denying the Corneals' motion for summary judgment, and granting in part and denying in part Defendants' motion for summary judgment. *See Corneal v. Jackson Township*, No. 1: CV-00-1192, order (M.D. Pa. Dec. 23, 2002). Specifically, the court granted summary judgment in favor of all Defendants on the Corneals' procedural due process claim and their claim for intentional interference with contractual relations (Count III). Additionally, the court granted summary judgment in favor

of the Township on the Corneal's claim for civil conspiracy (Count II).

However, the court denied Defendants' motion for summary judgment in several respects. Most importantly, the court held that a trial was required on the Corneals' claim that Defendants violated their substantive due process rights under the Fourteenth Amendment to the United States Constitution. Relying principally on *Midnight Sessions Ltd. v. City of Philadelphia*, 945 F.2d 667 (3d Cir. 1991), *Bello v. Walker*, 840 F.2d 1124, 1128 (3d Cir. 1988), and *DeBlasio v. Zoning Board of Adjustment for the Township of West Amwell*, 53 F.3d 592 (3d Cir. 1995), the court held that there was a genuine dispute regarding whether Defendants had acted with an improper motive in imposing the subdivision moratorium and in blocking the Corneals from initiating construction on their property. *See Corneal v. Jackson Township*, No. 1: CV-00-1192, memo. at Part III.A.2 (M.D. Pa. Dec. 23, 2002) [hereinafter "Initial Summary Judgment Memo."]. With respect to Counts II and IV – the Corneals' claims for civil conspiracy and violation of their due process rights under the Pennsylvania Constitution – the court likewise held that there was a material issue of fact regarding whether Defendants' acted with an improper motive. *See Id.* at Parts III.B.1 and 3.

Midnight Sessions, Bello, and *DeBlasio* all stand for the proposition that, in the context of land use cases, allegations that a local executive body acted with an improper motive are sufficient to state a valid claim for violation of substantive due process under the Fourteenth Amendment to the United States Constitution. Twenty-two days after the court issued its summary judgment opinion in the captioned matter, however, the Third Circuit Court of Appeals declared that the "improper motive" test no longer governs substantive due process challenges to local land use decisions. *See United Artists Theatre Circuit, Inc. v.*

Township of Warrington, 316 F.3d 392, 401 (3d Cir. 2003). Instead, challenges to those decision are valid only if the locality's actions "shock the conscience." *Id.* at 402. In light of the Third Circuit's holding, this court subsequently vacated its summary judgment decision regarding the Corneals' substantive due process claim, Count II, and Count IV. Additionally, the court ordered the parties to re-brief Defendants' summary judgment motion as to these issues in light of the Third Circuit's decision in *United Artists Theatre Circuit.* On April 1, 2003, Defendants filed the instant motion. Previous to the court's partial vacatur, the Corneals filed a motion for reconsideration of the court's decision to grant summary judgment in favor of the individual Defendants' on the intentional interference with contractual relations claim (Count III).

II. DISCUSSION

A. Defendants' Motion for Summary Judgment

1. Legal Standard

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Saldana v. Kmart Corp.*, 43 V.I. 361, 260 F.3d 228, 231-32 (3d Cir. 2001) (quoting *Armbruster v. Unysis Corp.*, 32 F.3d 768, 777 (3d Cir. 1994) (internal quotation omitted)). A factual dispute is "material" if it might affect the outcome of the suit under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). A factual dispute is "genuine" only if there is a sufficient evidentiary basis which would allow a reasonable fact-finder to return a verdict for the non-moving party. *Id.* at 249. The court must resolve all

doubts as to the existence of a genuine issue of material fact in favor of the non-moving party. *Gans v. Mundy*, 762 F.2d 338, 341 (3d Cir. 1985); *see also Reeder v. Sybron Transition Group*, 142 F.R.D. 607, 609 (M.D. Pa. 1992).

Once the moving party has shown that there is an absence of evidence to support the claims of the non-moving party, the non-moving party may not simply sit back and rest on the allegations in its complaint. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). Instead, they must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, and designate specific facts showing that there is a genuine issue for trial." *Id.* (internal quotations omitted); *see also Saldana*, 260 F.3d at 232 (citations omitted). Summary judgment should be granted where a party "fails to make a showing sufficient to establish existence of an element essential to that party's case and on which that party will bear the burden at trial." *Celotex*, 477 U.S. at 322-323. "'Such affirmative evidence - regardless of whether it is direct or circumstantial -- must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance." *Saldana*, 260 F.3d at 232 (quoting *Williams v. Borough of West Chester*, 891 F.2d 458, 460-61 (3d Cir. 1989)).

2. Application

a. Count I: Substantive Due Process

The crux of the Corneals' substantive due process claim is that Defendants acted in concert to frustrate the Corneals' effort to subdivide and develop their ninety-five acre tract of land. According to the Corneals, Defendants needlessly complicated and delayed the Corneals' applications for permits and subdivision, thereby causing the Buyers to cancel their sales contract with the Corneals.

Drawing all genuine factual disputes in favor of the Corneals, it appears that Defendants intentionally opposed the Corneals' efforts, at least in part, because they did not like the Corneals.[4] That is, they felt Mr. Corneal was a "trouble making yuppie from over the mountain." (Van Dommelen Depo. at p. 71.)[5] Finally, the Corneals also contend that Defendant Wilson intentionally held up the subdivision process so that the Corneals would be unable to convey a portion of the tract to the Buyers on June 30, 2000. According to the Corneals, Defendant Wilson wished to prevent this contract from culminating so that he or his nephew could purchase the property, which belonged to Defendant Wilson's grandfather until 1960.

"To succeed in a substantive due process claim under Section 1983, 'a plaintiff must establish as a threshold matter

---

[4] The Corneals also contend that Defendant Wilson acted out of malice against them because the Corneals used Defendant Wilson's construction company, Eagle Excavation, for the initial percolation tests, but did not intend to use that firm for any of the remaining construction work. However, their own recitation of the facts in this case belies this contention. In their brief in opposition to Defendants' renewed motion for summary judgment, the Corneals state that after Eagle Excavation conducted the initial percolation tests and after the Board had enacted the moratorium on subdivision, Mr. Corneal attempted to use that firm - owned by Defendant Wilson - to construct a driveway. According to the Corneals, "Defendant Wilson later refused the job, so the Corneals hired a different contractor." (Pls. Br. in Opp. Renewed Mot. for Sum. J. at 10.)

[5] It appears that the Corneals' argument against summary judgment is premised, in large part, on this statement. While the Corneals, as the non-moving party "are entitled to all inferences which are fairly supported by the evidence ... [they] are not permitted to build their case on mere 'opprobrious epithets' of malice ... or the 'the gossamer threads of whimsey, speculation and conjecture.'" *Creative Env'ts, Inc. v. Estabrook*, 680 F.2d 822, 830 (1st Cir. 1992) (quoting *Snowden v. Hughes*, 321 U.S. 1, 10, 88 L. Ed. 497, 64 S. Ct. 397 (1943) and *White v. The Hearst Corp.*, 669 F.2d 14, 19 (1st Cir. 1962) (internal quotations omitted)).

that he has a protected property interest to which the Fourteenth Amendment's due process protection applies.'" *Grimm v. Sweeney*, 249 F. Supp. 2d 571, 608 (E.D. Pa. 2003) (quoting *Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118, 123 (3d Cir. 2000)). Ownership of property subject to a local land use regulation is a property interest entitled to substantive due process protection. *See DeBlasio*, 53 F.3d at 600.[6] As stated previously, in the context of land use decisions, only conduct which is so irrational as to "shock the conscience," gives rise to a substantive due process violation. *See United Artists*, 316 F.3d at 401-02.

While the Third Circuit in *United Artists Theatre Circuit* made clear that the "shocks the conscience" test governs substantive due process challenges to land use decisions, it did not decide whether the defendants' actions in that case were enough to survive a motion for summary judgment. 316 F.3d at 402 ("Having found that the District Court applied the wrong standard for evaluating United Artists' substantive due process claim ... we vacate the District Court's denial of the Supervisors' summary judgment motion and remand the case for further proceedings to determine whether United Artists can survive the Supervisors' summary judgment motion ...."). However, the court cited with approval lines of cases from the First and Eighth Circuits applying this standard. *See Nestor Colon Medina & Sucesores, Inc. v. Custodio*, 964 F.2d 32 (1st Cir. 1992); *Chesterfield Dev. Corp. v. City of Chesterfield*, 963 F.2d 1102 (8th Cir. 1992); *PFZ Props., Inc. v. Rodriguez*, 928 F.2d 28 (1st Cir. 1991); *Creative Env'ts, Inc. v.*

---

[6] Although *United Artists Theatre Circuit, Inc. v. Township of Warrington*, 316 F.3d at 401, overruled that aspect of *DeBlasio* dealing with the standard to be applied in substantive due process challenges to executive action, it left undisturbed *DeBlasio's* holding that property subject to local land use regulations is a property interest protected by substantive due process.

Estabrook, 680 F.2d 822 (1st Cir. 1982). These cases stand for the proposition that unless the locality's decision was "truly irrational," no substantive due process violation occurs. *Bituminous Materials, Inc. v. Rice County*, 126 F.3d 1068, 1070 (8th Cir. 1997). "To sustain such a claim, plaintiff must prove that the government action in question is 'something more than ... arbitrary, capricious, or in violation of state law.'" *Id.* (quoting *Chesterfield Dev. Corp.*, 963 F.2d at 1104). "Thus, even allegations of bad faith enforcement of an invalid zoning ordinance do not, without more, state a substantive due process claim." *Id.*

As best this court can discern, to survive summary judgment under the "shocks the conscience" test, rather than the "improper motive" test, the Corneals must have adduced evidence from which a reasonable jury could conclude that the Board's actions did not serve any rational land use purpose.[7] *See Dolan v. City of Tigard*, 512 U.S. 374, 387, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994) (holding that absence of nexus between permit condition and legitimate state interest converts valid land regulation into an "out-and-out plan of extortion"). As a result, unless the evidence indicates that the challenged decision is completely unrelated in any way to a rational land use goal, there is no violation of substantive due process. The corollary of that rule being that where the locality's decision is related in any way to some

---

[7] To hold that evidence need only demonstrate that improper motives played a part in the Board's decision – as the Corneals continue to claim – would be to revert to *Bello's* "improper motive" test, which the Third Circuit has rejected. *See United Artists Theatre Circuit*, 316 F.3d at 401. In adopting the "shocks the conscience" test as a replacement for the "improper motive test," the Third Circuit implied that the "shocks the conscience" test was more stringent than the "improper motive" test. Moreover, the Eight Circuit and First Circuit cases which the Third Circuit cited with approval confirm this. *See, e.g., Nestor Colon Medina & Sucesores, Inc. v. Custodio*, 964 F.2d 32 (1st Cir. 1992); *Chesterfield Dev. Corp. v. City of Chesterfield*, 963 F.2d 1102 (8th Cir. 1992).

rational goal, then no due process violation occurs even if the locality may have exceeded the scope of its jurisdiction. *See also infra* at p. 21-22.

In its research of this issue, the court has only uncovered a single case where a plaintiff's substantive due process challenge to a local land use decision survived a summary judgment motion under the "shocks the conscience" test. *See Collier v. Town of Harvard*, CV No. 95-11652-DPW, 1997 U.S. Dist. LEXIS 23582 (D. Mass. Mar. 28, 1997). In that unpublished case, the plaintiffs sought to expand their small herb house, located in the historic district of Harvard, Massachusetts, into a larger year-round residence. This plan required that the plaintiffs obtain several permits and zoning variances from Harvard's Zoning Board of Appeals ("ZBA"). The ZBA was advised on such matters by the Harvard Planning Board ("HPB"). One of the plaintiffs' neighbors, Richard DeBoalt, was a member of the HPB. Previous to the plaintiffs' filing of the necessary applications, DeBoalt had sought an easement from the plaintiffs for rear access to his property. DeBoalt also vehemently opposed the plaintiffs' plans. When the HPB considered the plaintiffs' application, DeBoalt attended the HPB's confidential discussion, but did not vote. The HPB recommended that the ZBA deny the plaintiffs' application. At some point, the ZBA chairperson visited the plaintiffs at their home and instructed them that the application process "would go more smoothly" if they granted DeBoalt his requested easement. *Id.* 1997 U.S. Dist. LEXIS 23582 at *7 n.5. In the days before the plaintiffs' second application was scheduled to be heard by the ZBA, DeBoalt's counsel faxed the plaintiffs' counsel a letter indicating that DeBoalt had no objection to the application, but that he was "waiting for a copy of a draft easement from [the plaintiffs]." *Id.* 1997 U.S. Dist. LEXIS 23582 at *24. Later, on the day of the ZBA's meeting, DeBoalt's counsel faxed the plaintiffs' counsel a

letter stating that "the agreement and easement need to be finalized today because the meeting is tonight." *Id.* 1997 U.S. Dist. LEXIS 23582 at *8. The plaintiffs, however, refused to issue DeBoalt an easement, even after he indicated that he would introduce evidence that would preclude relief from the ZBA if he did not get the easement. Subsequently, the plaintiffs received a proposal from the ZBA laying out a plan that the plaintiffs would be required to adopt if they wished to obtain the permits necessary for their plan. Among those requirements, the proposal stated that the plaintiffs should "bite the bullet and accept responsibility for negotiating access accommodation with [his] neighbors (the Town and DeBoalt)." *Id.* 1997 U.S. Dist. LEXIS 23582 at *10. No compromise regarding the easement occurred, and the plaintiffs' permit applications were denied. At the summary judgment phase, the court held that there was a genuine issue of material fact regarding whether DeBoalt acted out of purely improper personal motivations and whether members of the ZBA assisted him in his allegedly nefarious endeavor. Essentially, *Collier* involved an allegation of governmental extortion. That is, the plaintiffs' applications would have been approved if they simply capitulated to the public official's request for an easement across their property. As a result, the court found that a reasonable jury could have concluded that the ZBA's decision to deny the plaintiffs' application was fueled solely by personal motivations totally devoid of any rational land use planning concerns. Thus, *Collier* fell within the very narrow class of challenges to local land use decision which are "truly horrendous." *See Welch v. Paicos*, 66 F. Supp. 2d 138, 169 (D. Mass. 1999) (discussing *Collier*).

In the case at bar, the court cannot say that the Board's decisions were so totally unrelated to any legitimate land use planning goal that a reasonable jury could conclude that the Board's actions were totally irrational. It is

undisputed that the Township did not have a subdivision ordinance in effect in January of 2000. Likewise, it is beyond dispute that the Township had been working on developing such an ordinance in conjunction with Huntingdon County officials for approximately two years before the Corneals submitted their original subdivision proposal. Several citizens had voiced concern to the Board regarding the fact that the Township did not have any restrictions regarding subdividing of property. These citizens encouraged the Board to develop such a plan to preserve the Township's rural character. While the Board may have caught wind of the Corneals' plans and hastily decided to impose a moratorium, that decision served the purpose of maintaining the status quo of land development during the final approval process of the subdivision ordinance. Although the evidence could indicate that the Corneals' plans were the fulcrum for the Board's action, there is no indication that they were singled out for particularly harsh treatment.[8] In fact, the Township refused to review any subdivision proposals while the moratorium was in effect. Although the Corneals point to a litany of other decisions relating to the issuance of building permits and sewage modules, those decisions are properly viewed as extensions of the Board's initial decision to halt all subdividing in the Township until the Board could enact a comprehensive land use ordinance. Moreover, subsequent to the enactment of the

---

[8] The Corneals point to the fact that Defendant Van Dommelen granted all other building applications submitted to him, but he refused to even provide the Corneals with a permit application. While other applicants sought similar permits, no other permit applicant was similarly situated. Unlike the other applicants for building permits during the pendency of the moratorium, the Corneals needed to subdivide their property to be eligible for the building permits they sought, due to the existing dwelling on their property. (*See* Van Dommelen Depo. at 49.) Of course, the Corneals were not allowed to subdivide because the Board had enacted a moratorium on all subdivision.

Township's subdivision ordinance in July of 2000, the Corneals received all necessary permits and approvals to develop their land.

At best, the court finds that the totality of the facts, when viewed in the light most favorable to the Corneals, establishes that the Board may have acted with mixed motives; one related to a legitimate land regulation purpose (preserving land development status quo during the final approval process of the subdivision ordinance), the other related to illegitimate personal animus.[9] This is not enough to establish a violation of substantive due process. In *Bituminous Materials Inc. v. Rice County*, 126 F.3d 1068, 1071 (8th Cir. 1997), the Eighth Circuit, relying on *Chesterfield Development Corp.*, held that allegations of personal animus, alone, are not enough to survive a summary judgment motion in a substantive due process challenge to a local land use decision. In that case, the plaintiff, BMI, challenged a decision by the Rice County, Minnesota Board of Commissioners to impose extra restrictions on BMI's

---

[9] The Corneals also contend that Defendants acted out of desires of personal gain. According to them, Defendants sought to frustrate the Corneals' efforts because the property in question, through 1960, belonged to Defendant Wilson's grandfather and Defendant Wilson's nephew twice approached the Corneals about purchasing the property. No reasonable jury could conclude, based on this evidence, that this was the determinative factor in Defendants' decision to impose the moratorium. Moreover, even if Defendant Wilson were ill motivated, it would be improper to impute that motive to any of the other Defendants without evidence that they possessed a similar motive and willingly participated in Defendant Wilson's alleged scheme. *See Collins v. Nuzzo*, 244 F.3d 246, 251 (holding that for one member's improper motivation to be imputed to a legislative body for Section 1983 purposes, the evidence must indicate "both (a) bad motive on the part of at least a significant bloc of legislators, and (b) probable complicity of others" (quoting *Scott-Harris v. City of Fall River*, 134 F.3d 427, 438 (1st Cir. 1997) *reversed on other grounds sub nom. Bogan v. Scott-Harris*, 523 U.S. 44, 140 L. Ed. 2d 79, 118 S. Ct. 966 (1998))).

permit to locate a temporary asphalt pit in Rice County. At *the summary judgment* stage, BMI presented evidence that the Board's decision to impose the conditions was motivated by the Board's personal animus toward BMI's permit officer. In support of this claim, the permit officer indicated that when he requested that BMI not be subject to extra conditions that other gravel pit operators in the county were not subject to, one of the Board members replied, "We are the county, we make the rules and we can change them as we choose." 126 F.3d at 1071. When confronted with evidence that the Board was treating BMI more harshly than other pit operators, another Board member stated to the permit officer, "We have been screwing you over." *Id.* Other Board members echoed these sentiments, making comments to the effect that they did not care if BMI ever did business in Rice County again and that the permit officer was an "SOB." *Id.*

The district court, however, granted summary judgment in favor of Rice County. On appeal, the Eighth Circuit upheld that decision, stating that "the Board had rational bases upon which to restrict BMI's permit." *Id. 126 F.3d at 1070.* Specifically, the court held that Rice County citizens had expressed concerns about road damage, environmental damage, traffic safety and noise caused by BMI's operation of the gravel pit. In discussing the evidence regarding the Board members' personal dislike of the permit officer, the court stated the following:

> We conclude that these allegations are far too insubstantial to support a substantive due process claim. We acknowledge that there may be cases where land use decisions are so corrupted by the personal motives of local government officials that due process rights are implicated ... But it would be inconsistent with the high threshold we established in *Chesterfield* to hold that a substantive due

> process claimant will survive summary judgment by alleging that a land use planning decisionmaker does not like the plaintiff. That sort of inquiry would indeed turn the federal courts into zoning boards of appeal. Therefore, the district court properly dismissed BMI's substantive due process claim.

Id. (citations omitted).

Thus, it appears from these lines of cases that a substantive due process claim under the "shocks the conscience" test will survive summary judgment only if the plaintiff can present evidence from which a jury could conclude that the locality's decision was not rationally related to a legitimate land use goal. As a result, the plaintiff must demonstrate that the land use decision or regulation was so totally irrational that it could not possibly be the real reason for the locality's action or, alternatively, that the locality applied its decision selectively so that its land use concern could not have been legitimate despite the rational basis for it. While this is obviously an onerous burden to plaintiffs, the reason for it is not without logical support. As the First Circuit stated:

> Substantive due process, as a theory of constitutional redress, has in the past fifty years been disfavored, in part because of its virtually standardless reach. To apply it to claims like the present would be to insinuate the oversight and discretion of federal judges into areas traditionally reserved for state and local tribunals. Clearly, it is no simple matter to decide what abuses to regard as abuses of "substantive" due process. Every litigant is likely to regard his own case as involving such

> an injustice. Thus, we have consistently held that the due process clause may not ordinarily be used to involve federal courts in the rights and wrongs of local planning disputes. In the vast majority of instances, local and state agencies and courts are closer to the situation and better equipped to provide relief. We have left the door slightly ajar for federal relief in truly horrendous situations. But, this circuit's precedent makes clear that the threshold for establishing the requisite "abuse of government power" is a high one indeed.

Nestor Colon Medina & Sucesores, 964 F.2d at 45.

When viewed under this standard, it is evident that the Corneals' claim does not constitute a substantive due process violation under the "shocks the conscience" test. Like the defendants in *Bituminous Materials Inc.*, the Board had rational reasons to enact a moratorium on subdividing property pending the enactment of a comprehensive subdivision ordinance. Moreover, unlike the claim in *Bituminous Materials Inc.*, there is no evidence that the Board subjected the Corneals to disparate treatment. The Corneals have not presented any evidence that other developers or land owners were granted subdivision approval during the pendency of the moratorium or that the Board subjected the Corneals to more onerous conditions as other similarly-situated permit applicants. Thus, the Corneals have failed to adduce evidence from which a reasonable jury could conclude that Defendants' rational land use concern is a mere pretext.

The Corneals, however, also argue that the Board did not have the power to enact the moratorium and that this fact, when combined with the other circumstantial and direct evidence in this case, indicates that there is a genuine dispute

of material fact regarding whether the Board's actions "shock the conscience." The court, however, finds that even if the Board lacked the authority to enact the moratorium and may not have followed the proper procedure for enacting it, these facts will not insulate the Corneals' claim from summary judgment. It is undisputed that in January of 2000, before the Corneals had even submitted their original subdivision plan, the Board enacted a moratorium on any and all subdividing or conveying of property located in the Township. Before enacting this measure, Defendant Wirth consulted with Newton, the Township's solicitor, regarding whether the Township had the power to enact a moratorium. He indicated that the Board had such power. *(See* Newton Depo. at p. 25.) Although this conclusion appears to have been wrong in light of Pennsylvania law, an error of state law does not amount an actionable claim for violation of substantive due process. *See Chesterfield Dev. Corp.*, 963 F.2d at 1105 (8th Cir. 1992) ("A bad-faith violation of state law remains only a violation of state law."); *Welch v. Paicos*, 66 F. Supp. 2d at 167 ("Even when a planning board abuses its discretion, or disobeys state law in some manner, the federal courts will not automatically find a due process violation.").[10]

---

[10] Moreover, while it is disputed whether Defendants enacted the moratorium in bad faith, it is undisputed that Defendants inquired with Solicitor Newton as to whether the Township had the authority to impose such a temporary moratorium. (*See, e.g.*, Yoder Depo. at p. 68.) Solicitor Newton indicated that it did. *Id.* As it turns out, that advice was incorrect. Although at that time, Pennsylvania law indicated that localities had the authority to impose temporary moratoria on land development, they could only undertake such action while in the process of amending a previously-enacted subdivision ordinance. *Naylor v. Township of Hellam*, 717 A.2d 629, 633 (Pa. Commw. Ct. 1998). However, Jackson Township had not enacted a subdivision ordinance before imposing its moratorium in January of 2000. Thus, its actions were not in compliance with the Commonwealth Court's decision in Naylor. In any event, the Pennsylvania Supreme Court later overturned the Commonwealth Court's decision, holding that any and all moratoria on land development violate the Pennsylvania Constitution. *Naylor v.*

In summation, the court finds that the Corneals have failed to adduce facts from which a reasonable jury could conclude that the Board's actions were wholly divorced from any rational and legitimate land use concerns, *i.e.* that the Board's actions "shock the conscience." At best, the evidence, viewed in the light most favorable to the Corneals, indicates that the Board's actions were based on mixed motives which at least partly were related to rational and legitimate land use concerns. Accordingly, the court will grant summary judgment in favor of the Board on the Corneals claim in Count I for violation of their substantive due process rights.[11]

b. Count II: Civil Conspiracy

In Count II of the amended complaint, the Corneals claim that Defendants' actions constituted a civil conspiracy. Under Pennsylvania law, to recover for civil conspiracy, three elements must be proven: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage. *McKeeman v. Corestates Bank, N.A.*, 2000 PA Super 117, 751 A.2d 655, 660 (Pa. Super. Ct. 2000).

Township of Hellam, 565 Pa. 397, 773 A.2d 770, 776-77 (Pa. 2001) ("However much a rapidly expanding municipality may wish to declare 'time out' and stop all development, such effect, by whatever means achieved, would be constitutionally impermissible.").

[11] In support of summary judgment on the substantive due process claim, the individual Defendants argue that they are entitled to qualified immunity. Because the court has held that the facts, even in the light most favorable to the Corneals, do not constitute a violation of substantive due process, the court need not address whether the individual Defendants are entitled to qualified immunity. *See Saucier v. Katz*, 533 U.S. 194, 201, 150 L. Ed. 2d 272, 121 S. Ct. 2151 (1985) (holding that the first step in analyzing a claim of qualified immunity is to determine whether the alleged right is constitutionally recognized).

In response to Defendants' initial motion for summary judgment, the court denied that motion, holding that "there is a material issue of fact as to Defendants' motives." *Corneal v. Jackson Township*, No. 1: CV-00-1192, memo, at p. 22 (M.D. Pa. Dec. 23, 2002) (citing portion of opinion denying summary judgment as to the Corneals' substantive due process claim). The court went on to state, "Resolution of this issue is imperative. If Defendants' motivation was not improper, then the Corneals cannot establish the first element of a civil conspiracy." *Id.* Thus, the court's decision to deny summary judgment was premised on its decision that there was a material issue of fact regarding the Corneals' substantive due process claim.

Because the court has now vacated that decision and held that Defendants' actions did not constitute a violation of due process, the Corneals' claim in Count II must fail as well. The Corneals have failed to adduce evidence from which a reasonable fact finder could determine that the individual Defendants committed an unlawful act or committed a lawful act for an unlawful purpose. Accordingly, the court will grant summary judgment in favor of the individual Defendants as to this claim.

c. Pennsylvania Constitutional Claims

In Count IV, the Corneals allege various violations of the Pennsylvanian Constitution. *See* Pa. Const. Art. I, §§ 1, 17, and 26.[12] In response to Defendants' initial motion for

---

[12] Article I, Section 1 of the Pennsylvania Constitution provides, in relevant part: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are ... acquiring, possessing and protecting property ...." Section 17 states: "No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed." Finally, Section 26 states: "Neither the Commonwealth nor any

summary judgment as to these claims, the court made various findings. First, the court held that a private right of action for monetary damages exists for violation of the Pennsylvania Constitution. Second, the court held that PSTCA does not bar such claims against local governments. Third, the court held that Pennsylvania's due process protections are co-extensive with those protections guaranteed pursuant to the Fourteenth Amendment to the United States Constitution. Finally, because the court held there was a genuine issue of fact as to whether Defendants violated the Corneals' substantive due process rights under the United States Constitution, the court held that an identical issue existed with respect to the claim pursuant to the Pennsylvania Constitution. The court has now held that Defendants are entitled to summary judgment on the Corneals' substantive due process claim under the United States Constitution. *See supra* at Part II.A.2.a. Therefore, the court must make the same ruling as to the Corneals' claim for violation of the Pennsylvania Constitution. Accordingly, the court will grant summary judgment in favor of Defendants on Count IV.

B. Motion for Reconsideration

1. Legal Standard

The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Accordingly, a judgment may be altered or amended if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of

---

political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right."

law or fact or to prevent manifest injustice. *Max's Seafood Cafe by Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (citing *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).) "'A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant.'" *Ogden v. Keystone Residence*, 226 F. Supp. 2d 588, 606 (M.D. Pa. 2002) (quoting *Abu-Jamal v. Horn*, 2001 U.S. Dist. LEXIS 20813, No. CIV. A. 99-5089, 2001 WL 1609761, at *9 (E.D. Pa. December 18, 2001) (citations and internal quotation marks omitted)).

2. Application

In Count III of their amended complaint, the Corneals claim that the individual Defendants intentionally interfered with the Corneals' contractual relationship with the Buyers. The individual Defendants moved for summary judgment, arguing that the Corneals failed to adduce sufficient evidence to prove that the individual Defendants intended to harm the contractual relationship between the Buyers and the Corneals. The court granted that motion. In doing so, the court stated the following:

> In this case, the Corneals contend that Newton, acting alone or in concert with the other Defendants, informed the Buyers that the subdivision plan would not be approved and that no permits for the development of the tract would be granted. Even if the Corneals could show that this in fact occurred, Newton is no longer a party to this action. Thus, in order to recover, the Corneals would have to demonstrate some sort of nexus between Newton's actions and Defendants. It is clear that the Corneals have failed to adduce any

> such evidence. The Corneals cite the fact that Newton and the Buyer's attorney shared an office and a common secretary. Even if Newton did tell the Buyer's attorney to extinguish their contract with the Corneals, there is no evidence indicating that he did so at the behest of Defendants. In short, nothing in the record connects Newton's actions, whatever they may have been, to any of the individual Defendants.

(Initial Summary Judgment Memo. at 25.)

The Corneals contend that this holding constitutes an error of law. Disregarding the fact that there is no evidence of a connection between Newton's actions and any of the individual Defendants, the Corneals argue that the court erred by failing to consider other evidence regarding Defendant Wilson's motive for interfering with the contract and his knowledge of the contract's existence. However, without a connection between Newton and any of the individual Defendants, Newton's actions cannot be considered as part of the individual Defendants' alleged plan to sabotage the Corneals' land contract. The evidence does not even establish "a wink and a nod" connection between Newton's actions and the individual Defendants.

Thus, to find in favor of the Corneals on this claim, a jury would have to conclude that the individual Defendants' imposed the land development moratorium and permit decisions to frustrate the Corneals' attempt to sell off a portion of their tract. That is, the court would have to conclude that the destruction of the Corneals' contractual relationship with the Buyers was a foreseeable consequence of Defendants' land use decisions. No reasonable jury, however, could come to this conclusion based on evidence that a single member of the Board knew of the contract, that his company had performed some percolation tests for the

Corneals, and that his grandfather owned the Corneals' property over thirty years ago. Tellingly, there is no evidence that Defendant Wilson knew that the Corneals and the Buyers were scheduled to settle on June 30, 2000 or that any Defendant knew that the Buyers had revoked the contract when the Board enacted the subdivision ordinance in July of 2000. Such evidence would be necessary to prove that Defendants' actually intended to undermine the Corneals' contract through the imposition of land use regulations and would likewise go a long way in establishing that the moratorium was a pretext for frustrating the Corneals' contractual relationship with the Buyers. However, the Corneals have presented no such evidence.

Because there was no genuine issue of material fact regarding the Corneals' claim for intentional interference with contract, the court granted summary judgment in favor of Defendants. On reconsideration, the Corneals have not demonstrated that the court committed a clear error of law in coming to this conclusion. Accordingly, the court will deny the Corneals' motion.

IV. CONCLUSION

As stated above, in light of the Third Circuit's decision in *United Artists Theatre Circuit v. Township of Warrington,* the court will grant summary judgment in favor of Defendants' on the Corneals' substantive due process claim in Count I and their remaining claims in Counts II and IV. Additionally, the court will deny the Corneals' motion for reconsideration of the court's order granting summary judgment as to their claim in Count III for intentional interference with contractual relations. An appropriate order will issue.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: July 28, 2003.

ORDER

In accordance with the accompanying memorandum of law, **IT IS HEREBY ORDERED THAT:**

(1) Defendants' renewed motion for summary judgment on Plaintiffs' substantive due process claim in Count I, and on Counts II and IV is **GRANTED;**

(2) Plaintiffs' motion for reconsideration of that portion of the court's order of December 23, 2002 which granted summary judgment in favor of Defendants' on Count III is **DENIED;** and

(3) As a result of this memorandum and order, in addition to that portion of this court's memorandum and order dated December 23, 2002 which was not vacated, the Clerk of Court shall enter judgment in favor of Defendants and against Plaintiffs on Counts I, II, III and IV and to close the case file.

s/ Sylvia H. Rambo
Sylvia H. Rambo
United States District Judge

Dated: July 28, 2003.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID B. CORNEAL and SANDRA Y. CORNEAL,	:	**CIVIL NO. 1:CV-00-1192**
Plaintiffs	:	
	:	
v.	:	
	:	
JACKSON TOWNSHIP, Huntingdon County, Pennsylvania, *et al.*,	:	
Defendants	:	

ORDER

The background of this order is as follows: Plaintiffs, David and Sandra Corneal ("the Corneals"), filed this case alleging the following: (1) violations of their rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution (Count I); (2) that Defendants engaged in a civil conspiracy in violation of Pennsylvania common law (Count II); (3) that Defendants intentionally interfered with the Corneals' contractual relations (Count III); and (4) that Defendants' actions violated the Pennsylvania Constitution (Count IV). Upon the conclusion of discovery, the parties filed cross-motions for summary judgment.

By an order dated December 23, 2002, the court denied Plaintiffs' motion for summary judgment, but granted, in part, Defendants' motion for summary judgment. Specifically, the court granted summary judgment in favor of Defendants' on Plaintiffs' procedural due process claim in Count I, in addition, to Plaintiffs' state law claim in Count III. The court, however, denied Defendants' summary judgment motion as to Plaintiffs' substantive due process

claim in Count I, in addition to Plaintiffs' state law claims in Counts II and IV.[1]

As to Plaintiffs' substantive due process claim in Count I, the court, relying on *DeBlasio v. Zoning Bd. of Adjustment for the Township of West Amwell*, 53 F.3d 592 (3d Cir. 1995) and *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667 (3d Cir. 1991), held that a material issue of fact existed as to whether Defendants blocked Plaintiffs' land development plans because Defendants did not like Plaintiffs. On January 14, 2003, the United States Court of Appeals for the Third Circuit issued an opinion overturning *DeBlasio* and *Midnight Sessions*. *See United Artists v. Township of Warrington*, 316 F.3d 392, 401 (3d Cir. 2003). The court also held that in addressing substantive due process claims in the context of challenges to land use decisions, district courts should apply the "shocks the conscience" test instead of an "improper motive" test. *See id.* at 400 (citing *County of Sacramento v. Lewis*, 523 U.S. 833 (1998)).

Because the court in the instant matter applied *DeBlasio's* improper motive test in resolving Plaintiffs' substantive due process claim, the court's decision is no longer valid. However, it is not entirely clear whether Plaintiffs' claim would satisfy the "shocks the conscience" test. As a result, the court will vacate that portion of its December 23, 2002, order which denied Defendants' motion for summary judgment. Additionally, the court will require that the parties re-brief the substantive due process issue in light of the *United Artists* case.

---

[1] The court's rulings as to Counts II (civil conspiracy) and IV (Pennsylvania Constitution) were conditioned on the court's holding that a material issue of fact existed as to Plaintiff's claim for violation of substantive due process. *See Corneal v. Jackson Township*, No. CV:00-1192, slip op. at 22-23 and 30-31 (M.D. Pa. Dec. 23, 2002).

Accordingly, **IT IS HEREBY ORDERED THAT**:

(1) The portion of the court's order of December 23, 2002 which denied Defendants' motion for summary judgment is **VACATED**;

(2) No later than April 1, 2003, Plaintiffs shall file a renewed motion for summary judgments regarding Plaintiffs' substantive due process claim and Plaintiffs' state law claims in Counts II and IV;

(3) The court reserves its ruling with regard to Defendants' motion *in limine* and Plaintiffs' motion for reconsideration;

(4) Plaintiffs' motion to compel compliance with pretrial procedures and Defendants' motion for reconsideration are **DEEMED MOOT**; (5) The pretrial conference, currently scheduled for March 27, 2003 at 11 a.m., is **CANCELED**; and

(6) Jury selection, currently scheduled for April 7, 2003 at 9 a.m. is **CANCELED**.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: March 18, 2003.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID B. CORNEAL and SANDRA Y. CORNEAL,	:	**CIVIL NO. 1:CV-00-1192**
Plaintiffs	:	
	:	
v.	:	
	:	
JACKSON TOWNSHIP, Huntingdon County, Pennsylvania, *et al.*,	:	
Defendants	:	

MEMORANDUM

Before the court are cross-motions for summary judgment in the instant action. The parties have briefed the issues, and the matters are now ripe for disposition.

I. BACKGROUND

A. Facts

Plaintiffs, David and Sandra Corneal ("the Corneals"), filed this case alleging the following: (1) violations of their rights pursuant to the Fifth and Fourteenth Amendments to the United States Constitution (Count I); (2) that Defendants engaged in a civil conspiracy in violation of Pennsylvania common law (Count II); that Defendants intentionally interfered with the Corneals' contractual relations (Count III); and (4) that Defendants' actions violated the Pennsylvania Constitution (Count IV). Defendants in this action include the following: (1) Jackson Township, Pennsylvania; (2) W. Thomas Wilson; (3) Michael Yoder; (4) Ralph Wiler; (5) Ann L. Wirth, Jackson

Township Secretary; (6) David Van Dommelen, a building permit officer for Jackson Township; and (7) Barry Parks, Sewage Enforcement Officer for Jackson Township. Defendants Wilson, Yoder, and Wiler are members of the Jackson Township Board of Supervisors ("the Board").[1] The court has subject matter jurisdiction over this action based on 28 U.S.C. §§ 1331 and 1367. The following facts are undisputed unless otherwise noted.

In 1998, the Corneals, who reside in State College, Pennsylvania, acquired a ninety-five acre tract of land located in Jackson Township, Huntingdon County, Pennsylvania. The property had previously been part of the estate of Defendant Wilson's grandfather. The Corneals planned to subdivide and sell a portion of the tract. The Corneals believed that Jackson Township ("the Township") had to approve their subdivision plan. In order to assist them in obtaining approval from the Township, the Corneals had the tract surveyed and prepared a subdivision plan. The Corneals also hired Defendant Parks, the Township's Sewage Enforcement Officer, to test the tract for its suitability for an on-site septic system. Defendant Parks located suitable sites on the tract. After identifying the suitable septic sites, the Corneals hired Defendant Wilson's private firm, Eagle Construction, to conduct percolation tests. The tests were successful, and the Corneals paid Eagle Construction for its

---

[1] By an order dated March 29, 2001, the court dismissed Defendant Larry Newton, Jackson Township Solicitor, from this action. By order dated October 18, 2001, the court granted Plaintiffs' motion for leave to amend the complaint. However, the court made clear that "there should be no confusion as to Defendant Newton.... [T]he only matter pending before the court is whether Plaintiffs should be granted leave to amend their complaint so as to separately plead its state law cause of action against the remaining Defendants." Thus, "Newton is no longer a party to this suit." In fact, Newton was not served with the amended complaint. Yet, Plaintiffs continue, in error, to list Newton as a Defendant in their amended complaint.

services. At the time Defendant Wilson's firm performed the percolation tests, the Township was not considering enacting a moratorium on land use subdivision.

During August and September of 1999, the Corneals decided to subdivide the tract into three separate lots. They prepared a subdivision plan and marketed one of the lots, a twenty-five acre tract, on which sat a house and a barn. On October 7, 1999, the Corneals entered into a contract to sell the tract for $150,000 to John Hewett, Jr. and Joann Smith ("the Buyers"). In accordance with the contract's terms, the Buyers submitted a down payment of $4,000 and agreed to pay $500 per month against the purchase price until settlement; which was scheduled for June 30, 2000.

During this period, Jackson Township did not have a subdivision ordinance to govern the development of land within the township.[2] However, at a Board meeting in January 2000, the Board, by unanimous vote, decreed a temporary moratorium on new development, subdividing, and conveyance pending the enactment of a formal ordinance governing subdivision and land development. The moratorium was not enacted pursuant to a resolution or any other formal action. It merely appeared in the meeting's minutes. Besides its appearance in the meeting minutes, no other documents exist relating to the moratorium.[3]

---

[2] Huntingdon County has a Land Development Guide ("the Guide"). However, the Guide is not an ordinance pursuant to the provisions of the Municipalities Planning Code ("MPC"). *See* 53 Pa. Cons. Stat. § 10101, *et seq.*

[3] Although Defendants deny that the moratorium was enacted without formal action, they proffer no support for their denial. (See Defs. Resp. to Pls. Stat. Mat. Facts. at ¶ 45.) Moreover, the only statement on the record regarding this issue was made by Defendant Wirth. (See Wirth Depo. at 83, ¶¶ 19-21 ("Q: Was there some sort of a resolution or something indicating that the moratorium was being placed? A: No, it's only in the minutes.").) Finally, Defendants admit that, with the exception of the meeting minutes, no other document exists relating to the

The Corneals presented their original subdivision plan to the Board at the Township meeting in February of 2000. The plan indicated that the original ninety-five acre tract would be subdivided into three lots. On the largest of those lots, the Corneals planned to build their own home. The Corneals contend that they presented the plan to the Board because Defendant Wilson told Mr. Corneal that the subdivision plan required Board approval. (See Pls. Stat. Mat. Facts at ¶ 39.) Defendants deny this allegation. They contend that the Corneals' own agent, Mr. Simpson, told the Corneals that they were required to submit the subdivision plan to the Board. (See Defs. Resp. to Pls. Stat. Mat. Facts at ¶ 39.)

Because of the newly imposed moratorium, Defendants Wilson, Yoder, and Wiler refused to review the Corneals' subdivision plan. Within several days of the Township's refusal to review the plan, the Corneals submitted the plan to the County Planning Commission ("CPC"). The CPC reviewed the plan and, by way of a letter dated February 24, 2000, provided comments and recommendations. The CPC recommended that the Township deny approval of the plan in light of the Township's pending ordinance and moratorium against land development.

The Corneals revised the plan in hopes of receiving approval. They developed a new plan that reflected not three lots, but only two. One of these lots would be sold to the Buyers under the terms of their already existing contract with the Corneals. The other lot would contain the residual

---

moratorium. (Defs. Resp. Pls. State. Mat. Facts at ¶ 51.) The court, therefore, finds that although there is a dispute of fact about this issue, that dispute is not genuine. *See Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986) (holding that a factual dispute is "genuine" only if there is a sufficient evidentiary basis which would allow a reasonable fact-finder to return a verdict for the non-moving party).

amount of land, approximately sixty-nine acres, on which the Corneals would build a house, an art studio, and a garage. The Corneals submitted the revised plan to the CPC. On April 20, 2000, the CPC recommended conditional approval by the Township, pending adoption of the proposed land development ordinance. The CPC found that the revised plan appeared to conform to the proposed ordinance. Defendants Wilson, Yoder, and Weiler, however, refused to review the revised plan, citing the existence of the moratorium enacted a few months earlier.

Defendants, at various times throughout the Corneals' planning process, also refused to issue or approve other permits and applications. At a meeting in March of 2000, Defendants Wilson, Yoder and Weiler denied approval to sewage modules that Defendant Parks had approved. The Board of Supervisors cited the existing moratorium in support of its decision. Additionally, the Board denied the Corneals' request for a building permit to begin construction on the art studio. The Board indicated that it could not grant such a request because the sewer modules had not been approved. The Corneals then requested a privy permit, but the Board members instructed them that only Defendant Parks could issue such permits. Defendant Wirth then called Defendant Parks and instructed him not to issue any permits to the Corneals. That same evening, the Corneals contacted Defendant Parks to obtain the permit, and Defendant Parks told them that Defendant Wilson had barred him from issuing the permit. The Corneals then called Larry Newton, an attorney and Township Solicitor, to discuss the situation, but the Corneals did not receive a substantive response.

Wanting to begin developing the land, the Corneals constructed a one and a half (1.5) mile driveway through the tract. While constructing the driveway, the United States Army Corps of Engineers and the Commonwealth of Pennsylvania Department of Environmental Protection

approached the chosen contractor to investigate a complaint that the Corneals were violating wetlands regulations. The complaint was found to be without merit. Plaintiffs contend that Defendants Wilson and/or Defendant Wirth filed the complaint. (Pls. Br. in Sup. Mot. for Sum. J. at 5.)

Next, the Corneals planned to build a garage. They contacted Defendant Van Dommelen, the Township's Building Permit Officer, to obtain an application for a building permit. Defendant Van Dommelen, however, refused to issue the permit because the Board had instructed him not to issue any permits to the Corneals. Defendant Van Dommelen even called Defendant Wilson, in Mr. Corneal's presence. During that conversation, Defendant Wilson told Defendant Van Dommelen: "don't you dare issue [David Corneal] a permit." (Wilson Depo. at 128, ¶¶ 4-15.) Defendant Van Dommelen, however, had granted every other building permit application submitted to him in 2000. (Van Dommelen Depo. at 103, ¶¶ 3-13.) Moreover, Defendant Wilson does not know of any other building permit that the Township has ever denied. (Wilson Depo. at 186, ¶¶ 8-14.) Although Defendant Van Dommelen never refused to provide any other person in the Township with a permit, he refused to even provide the Corneals with a permit *application*. (See Van Dommelen Depo. at 56, ¶¶ 2-25.) During his conversations, Defendant Van Dommelen referred to Mr. Corneal as a "trouble making yuppie from over the mountain." (*Id.* at 71, ¶¶ 18-24.) He used this term to describe Mr. Corneal because Mr. Corneal "just behaves like someone who wants to get their own way and his age group." (*Id.* at 73, ¶¶ 1-2.)

On May 1, 2000, the Corneals received a letter from the Buyers' attorney. The letter informed the Corneals that the Buyers had terminated the agreement to purchase the tract due to difficulties with the Township in obtaining subdivision approval. The Buyers also requested that their

down payment of $4,000 be refunded along with the $3,000 in payments ($500 per month) paid to the Corneals in expectation of the settlement date of June 30, 2002.[4]

The Corneals allege that after the Buyers pulled out of their contract to purchase the subdivided portion of the Corneals' land, Defendant Wilson's nephew approached Mr. Corneal about the possibility of purchasing the tract. (Pls. State. Mat. Facts at ¶¶ 171.) Defendant Wilson, however, contends that his nephew approached Mr. Corneal before he entered into a contract with the Buyers. (Defs. Resp. to Pls. Stat. Mat. Facts at ¶¶ 171.) In any event, the Corneals began construction without a permit from the Township in July 2000. In October 2000, the Township brought suit against the Corneals to enjoin the construction. The parties, however, settled that matter.[5]

B. Procedural History

On June 30, 2000, the Corneals filed the instant suit. In Count I, the Corneals claim that Defendants, acting under color of state law, deprived them of their clearly established right and privilege to own, use, dispose, and develop their property as protected by the United States Constitution. In Counts II through IV, the Corneals made claims for civil conspiracy, intentional interference with contractual relations, and violations of the Pennsylvania Constitution. On March 29, 2001, the court granted the Township's motion to dismiss Count III of the original complaint, regarding the claim of intentional interference with contractual relations.

---

[4] The Corneals allege that Defendants intentionally informed the buyers about the situation. Amend. Compl. at ¶¶ 129 - 31. Newton and the Buyers' attorney work in the same office and share the same secretary.

[5] The Corneals concede that since the filing of this lawsuit on June 30, 2000, the Township has granted them all required permits necessary to begin development of the tract, including building permits, sewage permits, and a driveway permit.

However, the court refused to dismiss Count III as to the individual Defendants. Additionally, the court granted Newton's motion to dismiss him as a defendant in the case. The Corneals filed a motion for reconsideration on April 12, 2001, and an amended motion for reconsideration on July 27, 2001. On September 12, 2001, the court denied the motion for reconsideration. On October 18, 2001, however, the court granted Plaintiffs' leave to file an amended complaint. Plaintiffs filed an amended complaint on November 6, 2001. After the conclusion of discovery, the parties filed the cross-motions for summary judgment which are currently before the court.

II. LEGAL STANDARD: MOTION FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56 provides that summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A factual dispute is "material" if it might affect the outcome of the suit under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is "genuine" only if there is a sufficient evidentiary basis which would allow a reasonable fact-finder to return a verdict for the non-moving party. *Id.* at 249. The court must resolve all doubts as to the existence of a genuine issue of material fact in favor of the non-moving party. *Gans v. Mundy*, 762 F.2d 338, 341 (3d Cir. 1985).

Once the moving party has shown that there is an absence of evidence to support the claims of the non-moving party, the non-moving party may not simply sit back and rest on the allegations in the complaint; instead, they must "go beyond the pleadings and by [their] own affidavits, or by the

depositions, answers to interrogatories, and admissions on file, and designate specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (internal quotations omitted). Summary judgment should be granted where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden at trial." *Id.*

The standards governing the court's consideration of Federal Rule 56(c) cross-motions are the same as those governing motions for summary judgment, although the court must construe the motions independently, viewing the evidence presented by each moving party in the light most favorable to the nonmovant. *Raymond Proffitt Found. v. United States Envtl. Prot. Agency*, 930 F. Supp. 1088, 1096 (E.D. Pa. 1996).

III. DISCUSSION

A. The Corneals' claim under 42 U.S.C. § 1983

In Count I of the amended complaint, the Corneals allege that they are entitled to recover from Defendants based on 42 U.S.C. § 1983. Section 1983 is a remedial provision that imposes liability on any person who "under color of any statute, ordinance, regulation, custom, or usage of any State" deprives another of "any rights, privileges or immunities secured by the Constitution or laws...." 42 U.S.C. § 1983. Section 1983 does not grant any substantive rights, but instead offers redress for the deprivation of already existing Constitutional or statutory rights. *Maine v. Thiboutot*, 448 U.S. 1, 5-6 (1980).

In this case, the Corneals allege that Defendants, by intentionally and arbitrarily preventing the Corneals from developing their land, violated the Corneals' procedural and substantive due process rights under the Fourteenth

Amendment to the United States Constitution. Both parties move for summary judgment, arguing that the undisputed facts in the case entitle them to judgment as a matter of law. Because the court finds that there is a genuine dispute of material fact regarding Defendants' motivations, the court will deny both motions.

1. Procedural Due Process

The Corneals contend that Defendants' actions violated their due process rights. There are two types of due process claims under the Fourteenth Amendment: procedural and substantive. The Supreme Court has developed a two-part test for examining procedural due process claims: "[T]he first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Kentucky Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (internal citations omitted); *see also Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 680 (3d Cir. 1991) ("To establish a cause of action for a violation of procedural due process, a plaintiff ... must establish that the state procedure for challenging the deprivation does not satisfy the requirements of procedural due process.").

Thus, procedural due process claims, to be valid, must allege state sponsored deprivation of a protected interest in life, liberty, or property. *See Zinermon v. Burch*, 494 U.S. 113, 125 (1990). If such an interest has been, or will be deprived, procedural due process requires that the governmental unit provide the individual with notice and reasonable opportunity to be heard. *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d at 680 (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985)).

In the context of land use decisions, the Third Circuit has stated that a state provides adequate procedural due

process when it "affords a full judicial mechanism with which to challenge the administrative decision in question." *DeBlasio v. Zoning Bd. of Adjustment for the Township of West Amwell*, 53 F.3d 592, 597 (3d Cir. 1995) (quotations omitted) (affirming dismissal of procedural due process claim arising out of zoning decision). Therefore, even if a municipal board makes a wrong decision that affects a plaintiff's protected property interest, no procedural due process claim lies unless no adequate judicial mechanism exists for challenging the decision. *See Bello v. Walker*, 840 F.2d 1124, 1128 (3d Cir. 1988).

In this case, the Corneals' claim arises out of the Board's refusal to issue them building and sewage permits and the Board's adoption of a moratorium on subdivision pending the enactment of a zoning ordinance. However, the court finds that Pennsylvania provides a judicial mechanism to challenge these decisions. *See Bello*, 840 F.2d at 1128 ("Pennsylvania affords a full judicial mechanism with which to challenge the administrative decision to deny an application for a building permit."). Therefore, even if the decisions were not in accordance with Pennsylvania law, as the Corneals argue, they cannot constitute the basis of a procedural due process violation. As to the refusal to issue the requested permits, the Corneals could have appealed the Board's adverse decisions by filing an action in the Court of Common Pleas for Huntington County, Pennsylvania. *See* 53 Pa. Cons. Stat. § 11002-A (granting jurisdiction to court of common pleas over all appeals from all land use decisions). Likewise, the Corneals could have appealed the Board's decision to enact the moratorium by filing an action in the same court.[6] *See* 53 Pa. Cons. Stat. § 66601(f) ("Any person

[6] The Corneals argue that the Township lacked the authority to enact the moratorium and that their actions in doing so "effectively deprived the Corneals of the use and enjoyment of their property." (Pls. Br. in Sup. Mot. for Sum. J. at 15.) The court construes this as an argument that the

aggrieved by the adoption of any ordinance may make complaint as to the legality of the ordinance to the court of common pleas."). Because Pennsylvania afforded the Corneals a full judicial mechanism to challenge the Board's allegedly illegal actions, the Corneals procedural due process claim fails as a matter of law.

2. Substantive Due Process

To recover under a claim for violation of substantive due process, the plaintiff must allege that the government deliberately and arbitrarily abused its power. In addressing such a claim, "[A]llegations that the government's actions in a particular case were motivated by bias, bad faith, or improper motive, such as partisan political reasons or personal reasons unrelated to the merits of the plaintiffs' application, may support a finding of substantive due process violation." *Midnight Sessions*, 945 F.2d at 683.

Thus, to maintain their claim for violation of their substantive due process rights, the Corneals must first show that the Township acted to infringe a property interest worthy of protection under substantive due process. *DeBlasio*, 53 F.3d at 598 (citing *Ersek v. Township of Springfield*, 822 F. Supp. 218, 220 (E.D. Pa. 1993 1994)). The Third Circuit, in *DeBlasio*, concluded that mere ownership of property subject to a local land use regulation is a property interest entitled to substantive due process protection. 53 F.3d at 600. Thus, where, as here, a "governmental decision ... impinges upon a landowner's use and enjoyment of property, a land-owning plaintiff states a substantive due process claim where he or

---

allegedly ultra vires action of enacting a moratorium constituted a violation of the Corneals' right to procedural due process. As stated above, however, that claim is legally insufficient because Pennsylvania provided the Corneals an judicial mechanism for appealing the moratorium. *See* 53 Pa. Cons. Stat. Ann. § 66601.

she alleges that the decision limiting the intended use of the land was arbitrarily or irrationally reached." *Id.* at 601.

In *DeBlasio*, the court addressed virtually the same issue as is currently before the court. In that case, a property owner owned an industrial hut situated in West Amwell Township, New Jersey on which he operated an auto body repair shop. *Id.* at 594. In the mid 1960s, West Amwell enacted a zoning ordinance which declared the hut's area as a minimum residential use district. Because the hut's use as an auto body shop predated the enactment of the zoning ordinance, the hut received an exemption from the new zoning ordinance. In 1979, DeBlasio purchased the land on which the hut was located. *Id.* He then leased the property to Interstate Battery Systems. That entity operated a small battery distribution business out of the hut. The business continued for about ten years without interference from West Amwell officials. In 1989, however, the Township's zoning official, acting on a citizen complaint, found that the operation of the battery business constituted an expansion of the pre-existing nonconforming use. *Id.* at 595. Eventually, DeBlasio appealed that decision to West Amwell's Zoning Board of Adjustment ("ZBA"). Alternatively, he requested a variance if the ZBA determined that the property was not in compliance. The ZBA upheld the zoning official's finding and subsequently denied DeBlasio's request for a variance. *Id.* at 596.

DeBlasio then filed a § 1983 action, alleging, amongst other claims, that the ZBA's actions constituted a violation of his right to substantive due process. On appeal, the Third Circuit reversed the District Court's granting of West Amwell's motion for summary judgment as to DeBlasio's substantive due process claim. The Circuit Court found that a material issue of fact existed as to whether the ZBA, although ostensibly acting within their authority, acted on the basis of an improper motive. In making this finding,

the Third Circuit highlighted the existence of evidence indicating that the ZBA's secretary, Werner Hoff, may have acted to benefit himself or members of his immediate family. *Id.* at 601-02. Specifically, the court noted that there was evidence indicating that Hoff approached Interstate's manager a few months before the zoning officer began his investigation into the use of the hut. During that conversation, Hoff told Interstate's manager that he should purchase or rent property that Hoff owned because DeBlasio's property was not in conformance with West Amwell's zoning ordinance. During the first set of hearings before the ZBA, Hoff recused himself. However, during the proceedings in which the ZBA ultimately upheld the zoning officer's determination and denied DeBlasio's request for a variance, Hoff participated despite his earlier refusal to do so. Moreover, the zoning officer testified that Hoff implored him to issue more violations to DeBlasio. *Id.* at 595 n.2. Based on this evidence, the Third Circuit determined that a material issue of fact existed as to whether Hoff, for personal reasons, improperly interfered with the process by which the ZBA issued zoning decisions. Thus, the District Court's granting of summary judgment in favor of the defendants constituted reversible error.

Based on this holding, the court finds that the Corneals have stated a valid substantive due process claim. They are property owners who allege that Defendants impinged on their right to develop their property through regulations whose motivation was personal, not governmental. Therefore, resolution of the current motion turns on whether the Corneals have adduced sufficient evidence to create a material question of fact as to whether the Township and its employees deliberately and arbitrarily abused their power. That is, whether their "actions ... were motivated by bias, bad faith, or improper motive, such as

partisan political reasons or personal reasons." *See Midnight Sessions*, 945 F.2d at 683.

It is undisputed that Defendant Van Dommelen referred to Mr. Corneal as a "trouble making yuppie" and that Van Dommelen had never before denied an application for a permit until he denied Mr. Corneals' application. (Van Dommelen Depo. at 71, ¶¶ 18-24.) Further, Defendant Wilson told Van Dommelen "don't you dare issue [David Corneal] a permit." (Wilson Depo. at 128, ¶¶ 4-15.) In addition, Plaintiffs argue that Defendant Wilson filed a frivolous complaint with the Department of Environmental Protection and the U.S. Army Corps of Engineers, claiming wetlands violations on the Corneals' property. Based on this evidence, it appears that there is a material issue of fact as to whether Defendants blocked the Corneals' land development plans as a matter of land use policy or because they simply did not like Mr. Corneal and wanted to keep such a "trouble making yuppie" from erecting a home in the Township or from subdividing his property. Put simply, even if Defendants were authorized to enact a land development moratorium, they could not do so because they disliked Mr. Corneal or wished to spite him in some manner. *See Midnight Sessions*, Ltd., 945 at 683.

At the very least, Defendants' motives are unclear, and cannot be determined as a matter of law. Determinations as to a party's motivations, like those necessary to resolve the instant matter, are within the province of the jury, not the court. *See Id.* (citing *Bello*, 804 F.2d at 1130). The court, therefore, will deny both parties' motions for summary judgment.

3. Qualified Immunity

Defendants argue that, regardless of whether there is a material issue of fact regarding the Corneals' due process claim, the court should still grant summary judgment in favor

of Defendants because they are entitled to qualified immunity for their actions. "Qualified immunity is an 'entitlement not to stand trial or face the other burdens of litigation.'" *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). The longstanding rule on qualified immunity is that "officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

In order to determine whether a right is clearly established, the court must first determine whether the alleged right is constitutionally recognized at all. *Saucier*, 533 U.S. at 201; *Siegert v. Gilley*, 500 U.S. 226, 231 (1991); *Brown v. Grabowski*, 922 F.2d 1097, 1110 (3d Cir. 1990). If the facts do not allege such a violation, no further inquiries are necessary. *Saucier* at 201. If, on the other hand, the court finds that the plaintiff has alleged violation of a recognized right, then the court must determine whether it would be clear to a reasonable person that his conduct was unlawful in the situation he confronted. *Harlow*, 474 U.S. at 818; see also *Wilson v. Layne*, 526 U.S. 603, 615 (1999) ("[T]he right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established."). Further, when determining whether a right was clearly established, a court must look at the law at the time of the event. *See Harlow*, 457 U.S. at 818.

The Third Circuit has determined that in order for a right to be clearly established, there need not be a similar case directly on point. Rather, the test is whether "some but not precise factual correspondence to precedent" was available to the government official such that she may be charged with knowledge of the illegality of her actions.

Good v. Dauphin County Social Services, 891 F.2d. 1087, 1092 (3d Cir. 1989) (citing *Stoneking v. Bradford Area Sch. Dist.*, 882 F.2d 720, 726 (3d Cir. 1989)); *see also People of Three Mile Island v. Nuclear Regulatory Comm'rs*, 747 F.2d 139, 144 (3d. Cir 1984).

In this case, the court finds that Defendants are not entitled to qualified immunity based on the law in effect at the time of the actions in question. The Third Circuit issued the *DeBlasio* decision in 1995; four years before any of the events in the instant matter took place. That case made it clear that land use decisions impinging upon a landowner's development of his property violate the landowner's substantive due process rights where such decisions are arbitrarily or irrationally reached. 53 F.3d at 601. That case also made clear that a cause of action lies in such a case, even where the land use decision was not prohibited by law. *Id.* Thus, the court finds that, although not a factual carbon copy of the Corneals' situation, the *DeBlasio* decision is sufficiently analogous for the court to find that its holding evidenced that the Corneals had a clearly established right. Qualified immunity, therefore, is unavailable to Defendants in this case.

Defendants, however, hang their entire argument for qualified immunity on the fact that they believed that the Township was permitted to enact a temporary moratorium.[7] Thus, according to Defendants, their decisions to not issue

---

[7] In support of this proposition, Defendants cite *Naylor v. Township of Hellam*, 717 A.2d 629 (Pa. Commw. Ct. 1998). In that case, the Commonwealth Court held that municipalities may enact temporary moratoriums on land development to halt development while the municipality amends its land use ordinance. *Id.* at 633. The Supreme Court of Pennsylvania, however, overruled that decision in *Naylor v. Township of Hellam*, 773 A.2d 770, 776-77 (Pa. 2001) ("However much a rapidly expanding municipality may wish to declare 'time out' and stop all development, such effect, by whatever means achieved, would be constitutionally impermissible.").

permits to the Corneals flowed directly from a permissible action. *DeBlasio*, however, made it perfectly clear that even where a municipality is ostensibly acting within its rightful authority, a substantive due process violation is established if the plaintiff demonstrates that "the decision limiting the intended land use was arbitrarily or irrationally reached." *Id.* Accordingly, the mere fact that Defendants may have been authorized to issue temporary land moratoria at all times relevant to this litigation, does not entitle them to qualified immunity where there is a material issue of fact as to their motivation for taking such action.

4. Legislative Immunity

Defendants Wilson, Yoder, and Wiler also claim that they are entitled to legislative immunity, as the Township's Board members, insofar as the Corneals' claim arises out of the enactment of land development moratorium. The proponent of a claim to absolute immunity to a § 1983 action bears the burden of establishing the justification for such immunity. *Antoine v. Byers & Anderson*, 508 U.S. 429, 432 (1993). The Third Circuit has held that members of local legislative bodies are entitled to legislative immunity for actions taken in a purely legislative capacity. *Ryan v. Burlington County, New Jersey*, 889 F.2d 1286, 1290 (3d Cir. 1989); *Aitchison v. Raffiaini*, 708 F.2d 96, 98-99 (3d Cir. 1983). Courts apply a two-prong test to determine whether a government official's actions are to be regarded as legislative for immunity purposes. First, the action must be "substantively legislative" in that it requires a policy-making or line-drawing decision. Second, the decision must be "procedurally legislative" in that it must be undertaken through an established legislative process. *Ryan*, 889 F.2d at 1290-91.

In this case, it cannot reasonably be disputed that the enactment of the land development moratorium was

substantively legislative. The enactment reflects an important policy decision that halting development until the enactment of a subdivision plan was necessary pending adoption of the proposed subdivision ordinance. The minutes of the meeting reflect that although Huntington County was offering to draft boiler plate subdivision ordinances, "Jackson Township had already put a lot time into the proposed [subdivision] ordinance and it was felt that it was in the best of interest of the Township to proceed with the ordinance that the Supervisor's have decided on." (Defs. Mot. for Sum. J., Ex. 7.)

Although the court has no problem concluding that this action was substantively legislative, it is not persuaded that the moratorium was enacted according to an established legislative procedure. The moratorium is simply reflected in the meeting minutes. Pennsylvania law establishes a strict series of requirements for the enactment of an ordinance by the supervisory boards of second class townships, like Jackson Township. *See* 53 Pa. Cons. Stat. § 66601(a). Amongst the requirements for a valid ordinance, the township must first publish any proposed ordinance in a local newspaper at least once and at least seven days before enacting the ordinance. *Id.* These publication requirements are mandatory, rendering void all ordinances adopted in violation of these requirements. *See Lower Gwynedd Township v. Gwynedd Props., Inc.*, 591 A.2d 285, 287 (Pa. 1991). Moreover, all ordinances must be recorded in the township's ordinance book. *See* 53 Pa. Cons. Stat. § 66601(a). Like the publication requirements, the recording of the ordinance is mandatory and failure to do so renders an otherwise valid ordinance void ab initio. *See Cranberry Park Assocs. ex rel Viola v. Cranberry Township*, 751 A.2d 165, 167 (Pa. 2000). It is undisputed that the Board did not publish the proposed moratorium before enacting it, nor did

they record the ordinance in the ordinance book. Thus, the moratorium was not validly enacted.

Based on these facts, the court finds that legislative immunity is unavailable to the Board members in this case. Legislative immunity is designed to provide legislators with immunity "from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence, but for the public good." *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951). Thus, the court finds it would be incongruent to deem a procedurally defective legislative act as one undertaken through established legislative procedures. Accordingly, the court finds that the Board member Defendants are not entitled to legislative immunity for the enactment of the subdivision moratorium at issue in this case.

It is true that in *Acierno v. Cloutier*, 40 F.3d 597, 614 (3d Cir. 1994), the Third Circuit held that whether an act is procedurally legislative for purposes of legislative immunity does not turn solely on whether the legislators complied with the technical requirements for enacting legislation. Rather, courts are to focus their inquiry on whether there has been a "general adherence to legislative procedure." *Id.* In that case, the Third Circuit held that failure to properly title a notice of a proposed rezoning ordinance did not render the rezoning ordinance procedurally defective for purposes of legislative immunity. *Id.* at 615.

Acierno, however, is distinguishable from the instant matter. Crucial to its decision, the court stated, was the fact that there was "no indication in the record that members of the County Council bypassed state-mandated procedures in bad faith when enacting [the rezoning ordinance.]" *Id.* In the instant matter, on the other hand, there is a material issue of fact as to the motives behind the Board's actions. *See supra* at Part III.A.2. Additionally, there is substantial evidence indicating that the Board members, especially Defendant Wilson, interfered with the Corneals ability to

obtain sewage and building permits and that they attempted to impede the Corneals' development plans by filing a complaint with the Army Corps of Engineers and the Commonwealth's Department of Environmental Protection. *Id.* Moreover, the Third Circuit, in *Acierno* cited, as evidence of a lack of bad faith, the fact that the County Council "followed the ordinance procedure, published notice of its intended action, and held appropriate public hearings before enacting the rezoning ordinance." 40 F.3d at 615. In the instant matter, however, Defendants complied with none of these requirements, even though failure to do so would render their actions null and void pursuant to Pennsylvania law.[8]

Therefore, the court finds that the moratorium was not enacted pursuant to an established legislative procedure. Because the Board's actions were not procedurally legislative, its members are not entitled to legislative immunity in this case.

B. State Law Claims

1. State Law Civil Conspiracy

In Count II, the Corneals claim that Defendants' actions constituted a civil conspiracy. Under Pennsylvania law, in order to recover for civil conspiracy, three elements must be proven: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage. *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 660 (Pa. Super. Ct. 2000).

---

[8] Although the Board published the fact that it was going to have a meeting in January of 2000, none of its members could remember if that publication listed, as required, that the Board would be considering enacting a moratorium on all land development in Jackson Township.

The Corneals move for summary judgment arguing that the undisputed facts indicate that they are entitled to judgment as a matter of law. As with its finding regarding their substantive due process claim, the court finds that there is a material issue of fact as to Defendants' motives. *See supra* at Part III.A.2. Resolution of this issue is imperative. If Defendants' motivation was not improper, then the Corneals cannot establish the first element of a civil conspiracy. Accordingly, the court will deny the Corneals' motion for summary judgment as to Count II.

Defendants, on the other hand, argue that they are entitled to summary judgment because there is no evidence indicating that they committed an unlawful act. However, there is a material issue of fact regarding whether Defendants violated the Corneals' substantive due process claims. *See Id.* The court, therefore, cannot say that Defendants did not act unlawfully.

However, as far as the Corneals assert a cause of action against the Township for civil conspiracy, it is clear that such a claim is barred by the Pennsylvania Subdivision Torts Claim Act ("the PSTCA"). *See* 42 Pa. Cons. Stat. § 8541, *et seq.* The PSTCA provides that "[e]xcept as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." *Id.* "Th[e] immunity [also] extends to an employee of the [Township] who is liable for civil damages caused by acts which are within the scope of his office or duties." *Renk v. City of Pittsburgh*, 641 A.2d 289, 292 (Pa. 1994). However, the PSTCA limits the immunity of employees by providing that, in a situation where an "employee['s] ... act ... caused the injury and ... such act constituted a crime, actual fraud, actual malice, or willful misconduct," immunity shall not apply. 42 Pa. Cons. Stat. § 8550; *see also Sameric Corp. of*

Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 600 (3d Cir. 1998); *Renk*, 641 A.2d at 292; *Robbins v. Cumberland County Children & Youth Servs.*, 802 A.2d 1239, 1252 (Pa. Commw. Ct. 2002). This willful misconduct exception eliminates a municipal employee's immunity, but not the municipality's immunity. *City of Philadelphia v. Glim*, 613 A.2d 613, 617 (Pa. Commw. Ct. 1992).

Because civil conspiracy is, by definition, an intentional tort, the Corneals' claim against the municipality is barred, while the claim against the individual Defendants is not. *See Renk*, 641 A.2d at 293 ("In other words, the term 'willful misconduct' is synonymous with the term 'intentional tort.'").

Accordingly, the court will deny the Corneals' motion for summary judgment as to Count II of the amended complaint. The court, however, will grant, in part, Defendants' motion for summary judgment as to Count II. Specifically, the court will grant the motion as to Defendant Jackson Township. The court, however, will deny the motion as to the other Defendants.[9]

2. Intentional Interference with Contractual Relations

In Count III, the Corneals claim that Defendants intentionally interfered with the Corneals' contractual relationship with the Buyers. In order to recover for this claim, the Corneals must prove the following: (1) the existence of a contractual relationship; (2) an intent on the part of Defendants to harm the Corneals by interfering with their contractual relationship; (3) the absence of a privilege or justification for such interference; and (4) damages

[9] Although Defendant Jackson Township has not raised the PSTCA as a defense to Count II, as a matter of judicial economy, the court will not entertain claims at trial that are deficient as a matter of law.

resulting from Defendants' conduct. *See Triffin v. Janssen*, 626 A.2d 571, 574 (Pa. Super. Ct. 1993).

The Corneals argue that the loss of the Buyers' promise to buy resulted in damages in the amount of the contract. Defendants, on the other hand, argue that this claim is barred by the PSTCA. *See* 42 Pa. Cons. Stat. §8541, *et. seq.* Pursuant to its order of March 29, 2001, the court has already determined that the claims against the Township are barred by the PSTCA. For the reasons previously stated, the claim against the individual Defendants, however, is not barred. *See, supra*, Part III.B.1 (holding that the individual Defendants are not immune to suits based on their willful misconduct).

Like civil conspiracy, intentional interference with contractual relations is, by definition, an intentional tort. As such, the Corneals' claim against the municipality is barred, while the claim against the individual Defendants is not. *See Renk*, 641 A.2d at 293. Thus, only the Township may assert tort immunity in a claim of intentional interference of contractual relations, and the employees – as individual defendants without immunity for willful misconduct – will be found liable if the four-part test in *Triffin* is met.

Defendants alternatively argue that the Corneals' interference claim against the individual Defendants must fail because the Corneals have not adduced sufficient evidence to prove that the individual Defendants intended to harm the Corneals by interfering with their contractual relationship with the Buyers. In this case, the Corneals contend that Newton, acting alone or in concert with the other Defendants, informed the Buyers that the subdivision plan would not be approved and that no permits for the development of the tract would be granted. Even if the Corneals could show that this in fact occurred, Newton is no longer a party to this action. Thus, in order to recover, the Corneals would have to demonstrate some sort of nexus between Newton's actions

and Defendants. It is clear that the Corneals have failed to adduce any such evidence. The Corneals cite the fact that Newton and the Buyer's attorney shared an office and a common secretary. Even if Newton did tell the Buyer's attorney to extinguish their contract with the Corneals, there is no evidence indicating that he did so at the behest of Defendants. In short, nothing in the record connects Newton's actions, whatever they may have been, to any of the individual Defendants.

In summation, the Township is entitled to immunity on Count II pursuant to the PSTCA. Additionally, there is insufficient evidence connecting any of the individual Defendants to Newton's allegedly tortious interference. Accordingly, the court will grant Defendants' motion for summary judgment on Count II. Consequently, the court will deny the Corneals' motion for summary judgment as to this count.

3. State Constitutional Claims

a. A private right of action exists for monetary damages based on violation of the Pennsylvania Constitution.

In Count IV, the Corneals allege various violations of the Pennsylvanian Constitution. *See* Pa. Const. Art. I, §§ 1, 17, and 26.[10] Defendants argue that the court must grant

[10] Article I, Section 1 of the Pennsylvania Constitution provides, in relevant part: "All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are ... acquiring, possessing and protecting property...." Section 17 states: "No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed." Finally, Section 26 states: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any

summary judgment in their favor as these claims because, they contend, there is no private right of action for monetary damages for violation of the Pennsylvania Constitution. The Corneals concede that the Pennsylvania Supreme Court never has addressed the specific question of whether there exists a private cause of action for damages to remedy violations of the Declaration of Rights set forth in Article I of the Pennsylvania Constitution. (See Pls. Br. in Sup. Mot. for Sum. J. at 36.) The Corneals are correct. As discussed in *Robbins v. Cumberland County Children & Youth Services*, no cases exist to clarify "the difficult issue of whether there exists a direct right of action for money damages against government officials for violations of the Pennsylvania Constitution." 802 A.2d at 1251.

However, because many Pennsylvania courts have addressed claims based on violation of the Pennsylvania Constitution, without deciding whether a private right of action exists, the court finds that such a right does in fact exist. *See, e.g., Redevelopment Auth. v. Woodring*, 445 A.2d 724 (Pa. 1982). Moreover, Defendants, despite their insistence that this right is nonexistent, have not proffered a single case in which a court has refused to hear a claim based on violation of the Pennsylvania Constitution.

b. The PSTCA does not apply to the Corneals' claims for violation of the Pennsylvania Constitution.

Defendants alternatively argue that even if a direct cause of action exists under the Pennsylvania Constitution, the PSTCA serves as a bar for any state constitutional tort claims against the Township. The Corneals, however, cite a plethora of cases for the proposition that claims arising from violations of the Pennsylvania Constitution may be raised

---

civil right."

against local governments. *Coffman v. Wilson Police Dep't*, 739 F. Supp. 257, 266 (E.D. Pa. 1990) (holding that claims against local governments based on violation of the Pennsylvania Constitution fall outside the purview of PSTCA which is, as its title suggests, limited to tort claims); *Redevelopment Auth. v. Woodring*, 445 A.2d 724 (Pa. 1982); *Thelin v. Borough of Warren*, 544 A.2d 1135 (Pa. Commw. Ct. 1988); *Williams v. City of Pittsburgh*, 531 A.2d 42 (Pa. Commw. Ct. 1988); *Holland Enters., Inc. v. Joka*, 439 A.2d 876 (Pa. Commw. Ct. 1982); *see also DeBartolo v. City of Philadelphia*, 159 F. Supp. 2d 795, 801 (E.D. Pa. 2002) (holding that claim against municipal employee based on violation of Pennsylvania Constitution not barred by PSTCA where violation arises from employee's intentional conduct). However, there are also cases in which courts have held that the PSTCA applies to claims brought against local governments for violations of the Pennsylvania Constitution. *See Agresta v. Goode*, 797 F. Supp. 399, 409 (E.D. Pa. 1992) (holding City of Philadelphia immune to suit for violation of Pennsylvanian Constitution, but individual city officials not immune); *Robbins*, 802 A.2d at 1252 (holding County Children and Youth Services immune to suit that they failed to protect a child from physical abuse inflicted by mother).

Thus, the court is faced with a dilemma of conflicting authority regarding whether the PSTCA applies to claims for violations of the Pennsylvania Constitution. The court finds that the better reasoned approach is to hold that it does not apply. In doing so, the court looks to the analogous provision for violations of the federal constitution. Under 42 U.S.C. § 1983, a municipality may be held liable where the action allegedly violating a federal right "implements or executes a policy statement, ordinance, or officially adopted policy." *Monnell v. Department of Soc. Servs.*, 436 U.S. 658, 690 (1978). The *Monnell* case rejected *respondeat superior* liability for the acts of a municipality's employees. Rather,

the "official policy" requirement makes clear "that municipal liability is limited to action for which the municipality is actually responsible." *Pembaur v. Cincinnati*, 475 U.S. 469, 479-480(1986).

Thus, pursuant to § 1983, a municipality is liable for violations of federal rights only where such a right is violated as a result of municipal policy.[11] If the court were to hold, instead, that the PSTCA applied, a municipality would be immune from all claims based on violation of the Pennsylvania Constitution where the claims arose out of municipal employee's intentional conduct. Application of such a rule is especially absurd where, as in the present case, the state constitutional and federal constitutional standards are identical. *See infra* at Part III B.3.c (holding that the requirements of Article I, Section 1 of the Pennsylvania Constitution are identical to the procedural and substantive due process standards under the Fourteenth Amendment to the United States Constitution). Thus, if the court were to apply the PSTCA to the instant action, both the Township and the individual Defendants could be held liable for violation of the Corneals' substantive due process rights under their § 1983 claim. However, only the individual Defendants could be held liable for violation of the Pennsylvania Constitution's due process guarantee, even though both constitutions apply the same standard to determine whether a violation has occurred.

Although the PSTCA speaks only of municipal liability generally, it makes little sense to extend the PSTCA to cover alleged violations of constitutional rights where the legislature has not evidenced a clear intent to abrogate such fundamental rights. *See Coffman*, 739 F. Supp. at 266 (holding that "it would be peculiar if the legislature could

---

[11] The Township does not contend that the individual Defendants' actions in this case do not constitute municipal policy for purposes of imposing liability on the Township under § 1983.

abrogate rights protected by the [Pennsylvania] Constitution"). The court, therefore, holds that the PSTCA does not apply to cases where a plaintiff asserts a claim for monetary damages against a municipality based on violations of the Pennsylvania Constitution. Accordingly, the PSTCA does not bar the Township's liability for the Corneals' claim based on violation of the Pennsylvania Constitution.[12]

c. There is a material issue of fact as to whether Defendants violated the Corneals' substantive due process rights under the Pennsylvania Constitution.

It is well established that the rights found in the Federal Constitution are the minimal that a state must provide to individuals. However, "each state has the power to provide broader standards and go beyond the minimum floor established by the federal Constitution." *Commonwealth v. Edmunds*, 586 A.2d 887, 894 (Pa. 1991) (quotations omitted). However, "the Pennsylvania Supreme Court has held that the requirements of Article I, Section 1 of the Pennsylvania Constitution are not distinguishable from those of the [Due Process Clause of the] 14th Amendment ... [thus] we may apply the same analysis to both claims." *Robbins*, 802 A.2d at 1253 (quoting *Pennsylvania Game Comm'n v. Marich*, 666 A.2d 253, 255 n.6 (1995) (internal quotations omitted)); *see also Plowman v. Department of Transp.*, 635 A.2d 124, 126 (Pa. 1993) (holding that the

[12] It is worth noting that even if the court were to hold that the PSTCA applied to the Corneals' claim, such a holding would not affect the outcome as to the individual Defendants. Even if the PSTCA applied, those Defendants would still be liable because the Corneals' claim arises out of the individual Defendants' intentional conduct. *See* 42 Pa. Cons. Stat. § 8550; *Sameric Corp.*, 142 F.3d at 600.

standards for substantive due process are identical under both the United States and Pennsylvania constitutions).

The court has previously held that there is a material issue of disputed fact as to whether Defendants violated the Corneals' right to substantive due process of law as guaranteed by the United States Constitution. *See supra* at Part III.A.2. However, the court has also determined that Defendants are entitled to judgment as a matter of law as to the Corneals' claim that Defendants violated the Corneals' procedural due process rights under the Federal Constitution. *See supra* at Part III.A.1. Because the Pennsylvania Constitution incorporates the federal standards as to these rights, the court finds that these holdings are equally applicable as to the Corneals' claims for violation of the Pennsylvania Constitution. That is to say, a genuine issue of material fact exists with respect to the claim of substantive due process. Defendants, however, are entitled to judgment as a matter of law as the Corneals' procedural due process claims.

IV. CONCLUSION

In accordance with the preceding discussion, the court will deny Plaintiff s motion for summary judgment. The court, however, will grant, in part, Defendants' motion for summary judgment. Because the full panoply of procedures existed for the Corneals to challenge the Township's moratorium, the claim of procedural due process violations, under both the United States and Pennsylvania Constitutions, must fail. However, because the intent and motives behind the moratorium cannot be determined as a matter of law, the claim of substantive due process presents a genuine issue of material fact. As for the state law claim for civil conspiracy, Defendants' motion for summary judgment is granted on behalf of the Township because government immunity exists for the Township under the PSTCA. The court, however,

will deny the individual Defendants' motion for summary judgment regarding the state civil conspiracy claim. Because Plaintiffs have failed to adduce sufficient evidence to maintain a claim for intentional interference with contractual relations, the court will grant Defendants' motion for summary judgment as to Count III. Finally, with respect to the state constitutional claims, Defendants' motion for summary judgment will be denied. An appropriate order will issue.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: December 23 , 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID B. CORNEAL and SANDRA Y. CORNEAL,	:	**CIVIL NO. 1:CV-00-1192**
Plaintiffs	:	
	:	
v.	:	
	:	
JACKSON TOWNSHIP, Huntingdon County, Pennsylvania, *et al.*,	:	
Defendants	:	

ORDER

In accordance with the foregoing memorandum of law, **IT IS HEREBY ORDERED THAT:**

(1) Defendants' motion for summary judgment on Count I is **GRANTED in PART** and **DENIED in PART** as follows:

(A) Defendants' motion for summary judgment regarding the procedural due process claim is **GRANTED;**

(B) Defendants' motion for summary judgment regarding the substantive due process claim is **DENIED;**

(2) Defendants' motion for summary judgment on Count II is **GRANTED IN PART**. As the motion relates to Defendants Jackson Township, the motion is GRANTED. In all other respects, Defendants' motion for summary judgment on Count II is **DENIED;**

(3) Defendants' motion for summary judgment on Count III is **GRANTED;**

(4) Defendants' motion for summary judgment on Count IV is **GRANTED** with regard to the procedural due process claims, and **DENIED** with regard to the substantive due process claim;

(5) Plaintiffs' motion for summary judgment is **DENIED**.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: December 23 , 2002